

The State of South Carolina



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October 31, 1986

The Honorable Phil P. Leventis
Member, South Carolina Senate
Post Office Box 326
Sumter, South Carolina 29150

Dear Senator Leventis:

You have requested an opinion as to the following two questions:

1. Would State ownership allow us to prohibit out-of-state wastes from being shipped into South Carolina?
2. Would we be able to exclude Superfund wastes?

The few decided cases which have directly addressed the first question have concluded that a governmental entity which owns a disposal site may exclude out-of-state (or out-of-city or county, as the case may be) wastes without violating the Commerce Clause of the United States Constitution. Shayne Bros. v. District of Columbia, 592 F. Supp. 1128 (D.D.C. 1984); County Commissioners of Charles County v. Stevens, 473 A.2d 12 (Md. 1984). These cases find substantial support for their position in several U.S. Supreme Court cases which deal with related matters. While only a court can finally determine the matter, the above two cases and the Supreme Court cases cited therein indicate that State ownership would permit the exclusion of out-of-state wastes.

Your second question is primarily a factual question of whether the current owner of the landfill has any contractual duty to accept Superfund wastes for any extended period. This Office has discussed this with Bob King of DHEC, who has said that he is aware of no such contracts, and that he believes that such wastes are accepted on a case-by-case basis. Obviously, if this proposed transaction gets closer to reality, the existence or nonexistence of such contracts would have to be firmly

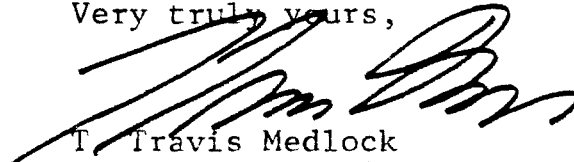
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verified. However, there is nothing in the federal Superfund legislation, 42 U.S.C. § 9601 et seq., which requires a given site to accept cleanup wastes.

Please let me know if I can provide further information.

With best regards, I am

Very truly yours,



T. Travis Medlock
Attorney General

TTM:jca